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No. 08-1458

Supreme Court, U.S.
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In The

Supreme Court of the United States

MISSOURI GAS ENERGY,

Petitioner,

v.

MONICA SCHMIDT,
WOODS COUNTY, OKLAHOMA ASSESSOR,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Oklahoma

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS PRESENTED

Respondent submits that the following questions more accurately reflect the issues presented in Missouri Gas Energy's ("MGE") Petition for Writ of Certiorari:

1. Whether the Oklahoma Supreme Court erred in determining that the ad valorem tax assessments in this case on natural gas stored underground in Woods County, Oklahoma and owned by MGE did not violate the Commerce Clause under the test articulated by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

2. Whether the Oklahoma Supreme Court's factual finding under Oklahoma law that MGE owned the natural gas stored underground in Woods County, Oklahoma on the date it was assessed violated the Due Process Clause.

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BRIEF IN OPPOSITION TO CERTIORARI

Respondent Monica Schmidt, Woods County, Oklahoma Assessor ("Assessor"), respectfully submits this Brief in Opposition to Certiorari.

COUNTER-STATEMENT OF THE CASE

MGE asserts Due Process and dormant Commerce Clause violations arising primarily from its faulty premise that "Woods County did not determine actual ownership" but instead "used a fictional ownership allocation. . . ." (Pet. 3). Correctly stated, MGE's complaint centers not upon any fictional determination of ownership, but instead upon the Oklahoma Supreme Court's application of Oklahoma law to undisputed facts clearly established by the record, the most significant being contractual agreements ("storage contracts") between MGE and Panhandle Eastern Pipeline Company ("Panhandle Eastern"). It appears that MGE has chosen to ignore these storage contracts, *but only with regard to ad valorem taxation*. However, the Oklahoma Supreme Court applied Oklahoma law to these facts, and there is nothing "fictional" or "blatantly wrong" with the determination of ownership or the ad valorem tax assessments at issue.

Although MGE characterizes its Petition as presenting constitutional issues, in reality MGE's appeal is something altogether different. As a fundamental premise, MGE essentially asks this

Court to reconsider the Oklahoma Supreme Court's factual determination that MGE owned the assessed gas stored underground in Woods County, Oklahoma. (MGE's Answer Brief at 9 ("Ownership is a question of fact.")). It is undisputed that gas was stored underground in Woods County on the assessment dates in question. MGE simply disagrees with the Oklahoma Supreme Court's conclusion that MGE owned a portion of that gas. Disregarding the key undisputed fact that Panhandle Eastern determined and reported that ownership, MGE would have this Court believe that the Assessor arbitrarily allocated ownership of gas to MGE.

MGE and every other shipper on the system has contractually granted Panhandle Eastern possession and control of all shippers' gas and the authority to determine ownership at any location. MGE relies upon and is greatly benefited by Panhandle Eastern's authority each time it purchases and injects gas into the system in the field and *simultaneously* sells an equivalent volume of gas hundreds of miles away to a customer. MGE readily admits that because "as a matter of physics" it would take days for the gas MGE injects in the field to reach such a distant point of sale, obviously the gas MGE sells is "not . . . the same gas MGE actually purchased" and injected into the system. (Pet. 3, 13). Obviously, MGE would be unable to sell gas at distant locations absent Panhandle Eastern's determination of ownership, which is the same determination it has made in this

case. However, *with regard to ad valorem taxation only*, MGE now calls this determination "fictional".

The Supreme Court of Oklahoma found MGE's inconsistent position untenable. Despite MGE's frustration, this Court should not grant certiorari to revisit this factual finding. The Oklahoma Supreme Court's decision does not conflict with the decisions of another state court of last resort or this Court, and does not satisfy this Court's criteria for review. *See* Sup. Ct. R. 10.

A. Factual Background

1. The Panhandle Eastern pipeline system

Panhandle Eastern's pipeline system extends from Texas, Oklahoma and Kansas northeast to Missouri, Indiana, Illinois, Ohio and Michigan. The system is operationally divided into a "Field Zone" where gas is purchased by shippers such as MGE and injected into the system at receipt points, and a "Market Zone" where gas is ultimately delivered to the shippers for subsequent sale to consumers. The Field Zone has two pipeline legs: the "Elk City System" originating in Oklahoma, and the "Hansford System" originating in Texas. The Elk City System contains the North Hopeton underground storage facility in Woods County, Oklahoma, and the Hansford System contains the Borchers underground storage facility in Meade County, Kansas. The Elk

City System and the Hansford System converge in Haven, Kansas.

The Federal Energy Regulatory Commission's ("FERC") regulation of pipeline systems has significantly evolved over time to the benefit of companies like MGE. Prior to 1992, interstate pipeline companies typically owned the gas in their pipeline systems, purchasing it from producers, transporting it, and selling it to local distribution companies, which were not offered the option of purchasing and transporting gas themselves. Local distribution companies subsequently sought this right, which led in 1992 to the issuance of FERC Order No. 636 requiring pipelines to separate their transportation and sales services to allow local distribution companies to transport and store their own gas. FERC Order No. 636 also required that pipelines offer storage and "no-notice" transportation, allowing local distribution companies to receive gas from pipelines on demand to meet peak needs.

MGE now hires Panhandle Eastern to ship and/or store gas it purchases and injects into Panhandle Eastern's system in the Field Zone. Upon injection MGE has the right to *simultaneously* take delivery of an equivalent volume of gas hundreds of miles away in the Market Zone, vastly enhancing MGE's ability to timely and reliably provide gas to consumers. Obviously, the gas that MGE receives and sells in the Market Zone is not, in terms of molecules of gas, the same gas it injects into the system.

To make this process work, Panhandle Eastern must have not only complete control over the location, movement and storage of all shippers' commingled gas in the system, but also the authority to determine ownership of gas at any location on the system. The storage contracts between MGE and Panhandle Eastern grant this authority, providing that MGE cannot specify where its gas will be stored, and are expressly subject to, and controlled by, FERC's tariffs and regulations. (*See* Pet. App. 13a, ¶22).[1] The FERC tariff in the record in this case requires that Panhandle Eastern determine the volume of gas owned by each shipper in each storage facility for ad valorem tax purposes:

> For purposes of reporting Storage inventories for state ad valorem taxes, . . . [i]nventories in Field Area Storage Facilities shall be allocated to all Shippers with inventories [under various FERC Tariff Rate Schedules], based on the ratio of total Storage inventories for the state divided by total Storage inventories for all states times the Shipper's total Stored Volume under such Rate Schedules. (Pet. App. 23a-24a, n.35).[2]

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[1] Citations in this format are to the Appendix to the Petition for a Writ of Certiorari.

[2] Although this express language was added to the FERC tariff subsequent to the assessments in this case, it sets forth the exact methodology utilized by Panhandle Eastern to determine and report ownership to Assessor.

2. The ad valorem tax assessments

Panhandle Eastern determined and reported the ownership of gas stored in the North Hopeton facility on January 1 of 1998, 1999 and 2000 to the Assessor. (Pet. App. 23a, ¶41). Assessor then utilized Panhandle Eastern's determination to send omitted personal property assessments to all owners of the gas without making any allocations or reallocations as repeatedly asserted by MGE. Nevertheless, MGE now disputes Panhandle Eastern's authority to make this determination even though MGE accepts the benefits of and apparently does not deny Panhandle Eastern's authority to do so in any other situation.

B. Procedural History

After being assessed with the ad valorem taxes in this case, MGE appealed to the Woods County Board of Equalization, which affirmed the assessment. MGE then appealed to the district court. There, MGE argued that Assessor could not prove that MGE owned gas with a taxable situs in Woods County and therefore could not meet the statutory requirements of Oklahoma's Ad Valorem Tax Code. MGE further argued that the assessments were unconstitutional under the Supremacy Clause and Commerce Clause.[3] The district court found that Assessor failed to prove

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[3] MGE also contended that the assessed gas was exempt from taxation under the Freeport Exemption in the Oklahoma Constitution but the district court rejected this contention.

MGE owned the gas assessed or the situs of that gas and further found that the assessments violated the Commerce Clause.

Assessor then appealed to the Oklahoma Supreme Court which reversed the district court's ownership, situs and dormant Commerce Clause determinations.[4] The Oklahoma Supreme Court recognized that "this case certainly presents some complexity," but found that "the fundamental question is simple: does the taxpayer own property located in the county seeking to impose the ad valorem tax?" (Pet. App. 43a). The Court's answer to this factual question was "a resounding yes." (*Id*). The Court held that the gas in the North Hopeton facility is owned in common by shippers and that the allocation formula used by Panhandle Eastern set forth in the FERC tariff in the record in this case was a "fair and reasonable method of apportioning ownership among common owners" that has been "approved by the federal regulatory agency with special knowledge of the workings of the natural gas industry in general and the transportation and storage facets of the natural gas business." (Pet. App. 24a).

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[4] The Oklahoma Supreme Court affirmed the district court's decision on the Freeport Exemption.

On the question of situs, the Oklahoma Supreme Court found that the stored gas had a taxable situs in Woods County under Oklahoma statutes and found that such determination comports with the Due Process Clause because the "assessment is not a tax on property that is *merely* passing through Woods County to an out-of-state destination. It is a tax on tangible personal property actually located in Woods County on the assessment dates . . . [and] is present in Woods County with a sufficient degree of permanence to satisfy the dictates of due process." (Pet. App. 19a-20a).

The Oklahoma Supreme Court then applied the four-part test articulated by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977) to the facts in this case, holding that the district court erred in ruling that the assessed volumes of gas held in underground storage in Woods County were protected from ad valorem taxation by the Commerce Clause.

REASONS FOR DENYING THE PETITION

The vast majority of MGE's Petition is devoted to criticizing the Oklahoma Supreme Court's factual determination that MGE owned the assessed gas and its application of *Complete Auto*. Noticeably absent from the Petition, however, is any reason, much less a compelling one, for granting certiorari.

The Supreme Court of Oklahoma relied on and applied the legal standard articulated in *Complete Auto*, which MGE itself urged the Oklahoma Supreme Court to apply. No state court of last resort apart from the Oklahoma Supreme Court in this case has had occasion to consider the issue in this case in the thirty-two years since *Complete Auto* was decided. The present case stands in stark contrast to the long build up prior to *Complete Auto* of "a 'quagmire' of judicial responses to specific state tax measures." *Am. Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 280 (1987).

Lacking any conflict or other viable argument for review, MGE attempts to expand the limited scope of the Oklahoma Supreme Court's decision. Far from issuing an expansive or novel decision, the Oklahoma Supreme Court, with substantial practical, jurisprudential and academic experience, applied this Court's well-established precedent. Justice Opala's decision carefully crafted a holding expressly narrow in scope: "We . . . hold that the contested tax meets all four prongs of the [*Complete Auto*] test and is valid under the Commerce Clause." (Pet. App. 29a, ¶47).

A. The Oklahoma Supreme Court's Decision Does Not Conflict with the Decisions of Another State Court of Last Resort

Relying on decisions from intermediate courts of appeal in Texas and Louisiana and dicta in a Kansas Supreme Court decision, MGE argues that the Oklahoma Supreme Court's decision in this case conflicts with the decision of another state court of last resort. MGE has not, however, identified a single decision of another state court *of last resort* with which the Oklahoma Supreme Court's decision is at odds.

MGE suggests that the Oklahoma Supreme Court's decision conflicts with the Kansas Supreme Court's decision in *In re Central Illinois Public Services Company,* 78 P.3d 419 (Kan. 2003). However, the main issue addressed and decided by the Kansas Supreme Court in that case was the interpretation of a Kansas statute. In *Central Illinois*, the Kansas Supreme Court held that pipeline customers were exempt from taxation under a Kansas statute. *In re Dir. of Prop. Valuation*, 161 P.3d 755, 760 (Kan. 2007). Four years later, the Kansas Supreme Court addressed an amended version of the same statute and again concluded that pipeline customers were exempt from taxation under the amended statute. *Id.* at 765. Because the Court's decision was based on statutory construction, it did "not consider or comment on any of the constitutional arguments." *Id.* at 761. As such, the Kansas Supreme Court has

not addressed the issue in this case and, therefore, there can be no conflict with the Oklahoma Supreme Court's decision.

In the absence of any conflict with a decision of another state court of last resort, MGE retreats to the argument that the Supreme Court of Oklahoma's decision conflicts with decisions from intermediate courts of appeal in Louisiana and Texas. These lower court decisions, however, actually demonstrate that certiorari should not be granted in this case.

The courts in the Louisiana cases cited by MGE, *United Gas Pipe Line Co. v. Whitman*, 390 So.2d 913 (La. Ct. App. 1980) and *Miss. River Transmission Corp. v. Simonton*, 442 So.2d 764 (La. Ct. App. 1983), actually *upheld* ad valorem taxes on gas in storage, albeit employing a pre-*Complete Auto* "continuity of transit" analysis. That there is no actual conflict with these Louisiana cases, which according to MGE "have not been cited by any court outside of that state," undermines MGE's request for review. (MGE's Answer Brief at 28-29).

The Texas decisions cited by MGE, *Peoples Gas, Light, & Coke Co. v. Harrison Central Appraisal District*, 270 S.W.3d 208 (Tex. App. – Texarkana 2009) and *Midland Central Appraisal District v. BP America Production Company et al.*, No. 11-070048-CV, 2009 WL 780456 (Tex. App. – Eastland, March 26, 2009), are likewise decisions from intermediate

courts of appeal.[5] MGE has not indentified a single decision of another state court of last resort with which the Oklahoma Supreme Court's decision is at odds.

B. This Case Does Not Present an Important Question of Federal Law That Has Not Been but Should Be Resolved by This Court

The Petition also fails to establish that this case presents an important question of federal law that has not been but should be resolved by this Court. Sup. Ct. R. 10(c). The frequency with which an issue arises is a critically important indicator of its importance. Here, MGE cites only a few cases from intermediate state courts of appeal that have addressed the issue. The infrequency with which the question presented here arises speaks for itself.

The fact is that *Complete Auto* has not caused the legal or practical difficulties asserted by MGE and *amici*. That should be enough to dispose of MGE's highly unusual pleas that the need for immediate review is especially acute so that this Court can

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[5] The appraisal districts in both *Peoples Gas* and *BP America* filed petitions for review from the adverse judgments of, respectively, the Texarkana Court of Appeals and the Eastland Court of Appeals. After reviewing the petitions and responses, the Texas Supreme Court recently requested full briefing in both cases.

straighten out the law, lest a deluge of litigation ensue. That plea is, in all events, antithetical to the principles of judicial restraint that guide this Court's exercise of its certiorari jurisdiction.

The Court's opinion in *Complete Auto* details a range of decisions that had confronted the issue and had come to differing and conflicting conclusions and results. Contrast the decades of debate leading up to *Complete Auto*, with the complete absence of any decision, much less a conflicting one, from another state court of last resort on the issue presented by the Petition in this case.

Finally, assessing the importance of the issue on review depends on an accurate portrayal of the record. MGE asserts that Assessor taxed "extra-territorial values" or "goods located in another state . . . ." (Pet. 15, 24-27). Specifically, MGE claims Assessor taxed gas located in Kansas. However, the gas assessed in this case was located underground "in Woods County and nowhere else." (Pet. App. 39a). MGE merely takes issue with Panhandle Eastern's ownership report provided to Assessor and the Oklahoma Supreme Court's factual determination, under Oklahoma law, that MGE owned the gas in Woods County. *See* Sup. Ct. R. 10 ("A petition . . . is rarely granted when the asserted error consists of erroneous factual findings . . . .").

The Oklahoma Supreme Court's actual decision is limited to the question of whether the requirements of *Complete Auto* were met in light of its

factual determination that MGE owned the assessed gas in Woods County.

C. The Oklahoma Supreme Court's Decision Does Not Conflict with the Relevant Decisions of This Court

In its attempt to establish a conflict with this Court's decisions, MGE attempts to have this Court delve into the Oklahoma Supreme Court's factual findings. Even if a mere plea for error correction of the Oklahoma Supreme Court's factual findings could justify granting certiorari (and it cannot), MGE's Petition fails because the Oklahoma Supreme Court's decision was correct.

In the Oklahoma Supreme Court, MGE asserted that "[t]he test used to determine if a state tax violates the Commerce Clause was set forth by the United States Supreme Court in *Complete Auto Transit* . . . " and "submit[ted] that goods . . . in storage . . . are properly analyzed under *Complete Auto Transit.*" (MGE's Answer Brief at 22). As such, "the analysis in *Complete Auto Transit* [wa]s properly before th[e] Court", and the Oklahoma Supreme Court applied that very analysis. (*Id.* at 23). Now, in its Petition, MGE takes a polar opposite position by criticizing the Oklahoma Supreme Court for applying the very test it asked that court to apply.

In contrast to its position below, MGE now asserts that the pre-*Complete Auto* "continuity of transit" test, and not *Complete Auto* itself, is the "proper dormant Commerce Clause analysis . . . ." (Pet. 20). MGE's Petition does not include the Oklahoma Supreme Court's telling discussion in that regard:

> Today, as both MGE and Assessor recognize, even if MGE's storage gas is in transit in interstate commerce, that does not automatically mean that a tax levied against it would contravene the Commerce Clause because "interstate commerce may be required to pay its fair share of state taxes." Correspondingly, a determination that MGE's storage gas is "at rest" in Oklahoma would not mean that it is beyond the reach of the Commerce Clause. "The Court has . . . long since rejected any suggestion that a state tax or regulation affecting interstate commerce is immune from Commerce Clause scrutiny because it attaches only to a 'local' or intrastate activity." (Pet. App. 28a (quoting *D.H. Holmes Co., Ltd. v. McNamara*, 486 U.S. 24, 30-31 (1988) and *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 615 (1981)).

Thus, the Oklahoma Supreme Court correctly recognized that "application of a traditional rule that leads to the inconclusive result that goods are either in transit or at rest would not resolve the issue before us today." (Pet. App. 29a). Accordingly, the Court

properly reviewed the constitutionality of the tax at issue in this case using the *Complete Auto* analysis.

In *Complete Auto*, this Court expressly overruled the line of decisions which established a *per se* bar to the taxation of goods in interstate commerce and adopted a four-prong test for deciding whether a particular state tax survives Commerce Clause scrutiny. This functional approach to evaluating state taxes was meant to replace the earlier rule which was "a triumph of formalism over substance, providing little guidance even as to formal requirements." *Complete Auto*, 430 U.S. at 281.

Thus, after *Complete Auto*, there is no need to engage in the analysis of whether the goods in question were in interstate commerce.[6] This is the

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[6] MGE implies that "continuity of transit" analysis retains validity under the Commerce Clause by pointing out that this Court still employs that analysis in cases involving the Import-Export Clause. Unlike the Commerce Clause, however, there still is bright-line immunity for goods in the stream of export under the Import-Export and Export Clauses. *See United States v. Int'l Bus. Machines Corp.*, 517 U.S. 843, 863 (1996). There is good reason for the difference. "In 'the unique context of foreign commerce,' a State's power is further constrained because of the special need for federal uniformity." *Barclays Bank PLC v. Franchise Tax Bd. of Calif.*, 512 U.S. 298, 311 (1994). Unlike the Import-Export and Export Clauses, which expressly protect goods in the stream of export from state taxation, the Commerce Clause "says nothing about the protection of interstate commerce in the absence of any action by Congress." *Quill Corp. v. North Dakota*, 504 U.S. 298, 309 (1992). Due to the textual disparities, modern Commerce Clause jurisprudence after *Complete Auto* is more generous to state taxation than is Export

(Continued on following page)

approach taken in *Complete Auto* itself. This Court noted that the parties had devoted much of their briefing to arguments about whether the property in question was in interstate commerce. *Id.* at 276 n.4. Like the lower courts in that case, however, this Court *assumed*, for purposes of its analysis, that the property was in interstate commerce and moved directly to applying the four-prong test. *Id.* The Oklahoma Supreme Court's decision to apply that test is not contrary to this Court's decisions.

After arguing that *Complete Auto* does not apply, MGE alternatively contends in its Petition that the Oklahoma Supreme Court misapplied the second and third prongs of *Complete Auto*. *Amici* contend that the Oklahoma Supreme Court misapplied the first and fourth prongs of *Complete Auto*. These complaints about the Oklahoma Supreme Court's straightforward application of the test in *Complete Auto* provide no basis for certiorari review. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). Nonetheless, Assessor briefly addresses these arguments below.

Clause jurisprudence to federal taxation. *IBM*, 517 U.S. at 851-52.

1. The Assessments Are Not Discriminatory

MGE contends that assessments are discriminatory because, according to MGE, "Woods County is taxing MGE on gas that could only be located in Kansas, while relieving other taxpayers of some of their burden to pay Woods County taxes on gas originating in Oklahoma." (Pet. 27-28). As it does throughout the Petition, MGE again claims that gas in Kansas was assessed and completely ignores both Panhandle Eastern's and the Oklahoma Supreme Court's factual determination that MGE owned the gas underground in Woods County. However, MGE cannot avoid the fact that the assessments were on "gas located in Woods County and nowhere else." (Pet. App. 39a).

A state tax is discriminatory if it "favors in-state business over out-of-state business for no other reason than the location of its business. . . ." *Scheiner*, 483 U.S. at 286. According to the Oklahoma Supreme Court, "MGE made no showing that Woods County or any other county in Oklahoma assesses the state's ad valorem tax in a manner that discriminates against out-of-state business. The tax in this case does not discriminate against interstate commerce." (Pet. App. 40a).

2. There Is No Risk of Multiple Taxation

MGE also argues that the Oklahoma Supreme Court erred in determining that the assessments in

this case are fairly apportioned under the second prong of *Complete Auto*. This Court determines "whether a tax is fairly apportioned by examining whether it is internally and externally consistent." *Goldberg v. Sweet,* 488 U.S. 252, 261 (1989). A tax is internally consistent if it is structured so that if every State were to impose an identical tax, no multiple taxation would result. *Id.*

Citing recent Kansas legislation, MGE raises a hypothetical specter of double taxation: If Kansas were to disregard Panhandle Eastern's FERC approved tariff and determination of ownership, MGE's gas would be subject to multiple taxation. (Pet. 30). However, no multiple taxation would result if Kansas were to impose a tax *identical* to the assessments in this case. Utilizing Panhandle Eastern's determination, Kansas would tax only the gas physically located in Kansas, just as the Assessor only taxed the gas physically located in Woods County, Oklahoma. *See Goldberg*, 488 U.S. at 261 ("if every state taxed only those interstate phone calls which are charged to an in-state service address, only one State would tax each interstate telephone call.").

In addition, MGE's suggestion that an assessor in Kansas would disregard Panhandle Eastern's determination is unsupported by the record and contrary to reality. MGE itself recognizes that tax assessors rely on Panhandle Eastern to determine ownership of the gas at the two Field Zone storage facilities. (*See* Pet. 9). Shippers, such as MGE, have no power by contract or federal regulation to make this

determination and thus shippers and tax assessors depend and rely on Panhandle Eastern to do so. Indeed, when the Director of Ad Valorem Tax for the parent corporation of Panhandle Eastern was specifically asked if it is possible that the assessor in Kansas may disagree with Panhandle Eastern's determination, he testified that the Assessors take the information Panhandle provides them at face value. He also testified, as the Oklahoma Supreme Court pointed out, that "the allocation methodology used by Panhandle to determine the amount of ownership of the gas at the two Field Zone storage facilities forecloses multiple state taxation. The tax is hence internally consistent." (Pet. App. 38a-39a).

3. The Assessed Gas Owned by MGE Has a Substantial Nexus with Oklahoma

The "substantial nexus" prong of *Complete Auto* is satisfied if there is "some definite link, some minimum connection between a state and the . . . property . . . it seeks to tax." *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 777 (1992). The Oklahoma Supreme Court did not err in finding that this element was met. MGE's storage gas has a substantial physical presence in Woods County throughout the year. Large volumes of gas owned by MGE are stored underground in Woods County. MGE accumulates gas when demand is low so that it can fulfill its customers' needs during the winter. The fact that some of MGE's gas may be injected into and

withdrawn from the North Hopeton facility over the year does not change the fact that a large volume of MGE's gas is stored in Woods County at all times. There is a "definite link" and more than "some minimum connection" between MGE's gas and Woods County.

4. The Assessments Are Reasonably Related to the Services Provided by Oklahoma

Although virtually "any ad valorem tax will satisfy the fourth prong" of *Complete Auto*, *amici* also argue that the Oklahoma Supreme Court erred in determining that the tax is reasonably related to the services provided by the state. *Commonwealth Edison*, 453 U.S. at 645 (Blackmun, J., dissenting). Like MGE below, *amici* point out that MGE has no offices or employees in Oklahoma, and contend that MGE does not use the state's infrastructure and does not benefit from fire or police protection. "The simple but controlling question," however, "is whether the state has given anything for which it can ask return." *Id.* at 625. The "relevant inquiry" is not "the amount of the tax o[r] the value of the benefits allegedly bestowed as measured by the costs the State incurs on account of the taxpayer's activities," but whether the tax is "reasonably related to the extent of the taxpayer's contact" with the taxing jurisdiction. *Id.* at 626. A tax is a means of distributing the burden of the cost of government, not an assessment of benefits. *Id.* at 622-23.

The Supreme Court of Oklahoma properly pointed out that "[t]he tax in this case operates on the presence of personal property in Woods County. It is taxed to the same extent as all other personal property in the county. MGE is therefore being asked to shoulder no more than its fair share for the support of government-provided services and the receipt of 'the advantages of a civilized society.'" (Pet. App. 42a-43a (quoting *Exxon Corp. v. Wisconsin Dept. of Revenue*, 447 U.S. 207, 228 (1980)).

In the end, MGE and *amici* are complaining about how the Oklahoma Supreme Court weighed the facts and applied the proper legal standard to the facts. Indeed, the heart of the Petition and the *amicus* briefs are devoted to reweighing the facts on which the Oklahoma Supreme Court relied. Contesting how the state appellate court weighed the facts and applied the settled law to them does not create a conflict or inconsistency with this Court's decisions. Further review by this Court is unwarranted.

CONCLUSION

For the reasons stated, the Petition should be denied.

Respectfully submitted,

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